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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 127

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,

vs.

THE RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF FACTS

Respondent respectfully takes exception to the summary of facts stated in Petitioners' Brief. Petitioners are Hotel & Restaurant Employees' Bartenders' International

Union, A. F. of L., Hotel & Restaurant Employees Local Union No. 705, Chefs, Cooks, Pastry Chefs Local Union No. 234, A. F. of L. and of the individual petitioners Max Gazan, is a business agent of Local No. 234, and the other two petitioners, George Asher and Pearl Craig are respectively, business agent and member and a leading picket of Local No. 705.

Petitioners went out on strike and respondent filed its bill of complaint in the Circuit Court for the County of Wayne, Michigan, alleging violence, mass picketing and other violations of State Law (R. 6, 42) and asked that the defendants therein, including all the petitioners herein, be enjoined and restrained from the unlawful conduct set out in said bill of complaint. On July 26, 1951, an Order to Show Cause was issued, returnable July 30, 1951, why an injunction should not be issued as prayed for in the bill of complaint. Considerable discussion was had between Court and counsel and the matter continued to August 2, 1951, at which time a full, extensive and exhaustive hearing and argument by counsel for both sides was had; and between that date and August 8, 1951, considerable discussion was had between Court and counsel as to the contents and form of the proposed injunction; and again on August 8, 1951, Court and counsel took painstaking care to draft an order defining the picketing which was permitted by the Court within legal limits. The Injunction Order was finally signed August 8, 1951, and was approved by all parties in the presence of all petitioners herein who were active participants (R. 14, 43, 44 and 45).

Thereafter, commencing on the same day and "hardly before the ink had dried on the signature of the Circuit Judge on the temporary injunction", the defendants therein and all the petitioners herein began to violently, contemptuously, wilfully, wantonly violate every letter and

spirit of the injunction (R. 18, 19). This conduct continued and increased in ferocity until it culminated on September 4, 1951 in an orgy of lawlessness, breaches of the peace, violence, repeated assaults, repeated damage of property of the respondent and of the general public, and rioting which required nearly all the police of Schaefer Precinct to quell and control. Even during the nearly three months of hearings while the testimony was being taken on the Order to Show Cause why petitioners herein and other defendants should not be punished for contempt of Court for violation of said injunction, it required "practically the entire complement of the police force of the Schaefer Precinct Police Station of the City of Detroit" to bring about and maintain even a semblance of order (R. 17-26, R. 46, 49) as the learned trial judge *found as a fact from said testimony.*

Pursuant to respondent's Petition for Order to Show Cause, the Court ordered all defendants, including the petitioners, to show cause on September 14, 1951 "why the defendants and their individual officers, agents, employees, pickets and confederates should not be punished for contempt of court in disobeying and violating the injunction" and "why the said temporary injunction should not be so modified and amended so as to enjoin and restrain in addition to the other matters enjoined and restrained in the original temporary injunction, the defendants and agents, officers, employees, pickets and confederates from any picketing whatever" and other relief.

The Order to Show Cause specified that it be served upon said defendants, "*their officers, agents, employees, pickets and confederates* by serving a copy thereof upon the offices of said defendants Hotel & Restaurant Employees' Local Union No. 705, and the Chefs', Cooks', Pastry Chefs' Local Union No. 234, and *upon the office of*

their attorney, Leon Cousens, Esquire, on or before midnight, September 10, 1951" (R. 27, 28). Service of the Orders to Show Cause and the supporting sworn petition and affidavits was made exactly as the order directed. (Italics ours.)

Upon the return date of said Order to Show Cause, the defendant Unions and a host of business agents, representatives, and members *including each and every one of the Petitioners herein appeared in response to said Order to Show Cause, and remained in open Court throughout the nearly three (3) months of hearings,* consulting with the various attorneys representing them and said Unions, took the witness stand to deny the charges against them, and had every opportunity possible available to them to produce, and they did produce, witnesses in their behalf (R. 61-63).

We respectfully refer this Honorable Court to the comprehensive Opinion, filed by Circuit Judge Joseph A. Moynihan, the Trial Judge (R. 42-53) for a full statement of the facts of this controversy.

Respondent emphatically rejects the right of the petitioners herein, to add matters in their brief which were wholly outside the record, and which obviously occurred, if at all, after this hearing was closed, *and were entirely unrelated to it in any manner.* We respectfully refer to the last paragraph of the petitioners' Summary of Facts, on page 4, and statements on page 17 of their brief, and the highly improper photostatic copy of an alleged newspaper article.

On July 5, 1952, after a copy of Petitioners' Brief in this Court and cause was served, we wrote Petitioners' Counsel with reference to such extraneous matter as follows:

> "Even more shocking to me has been your inclusion of the matters contained in the Motion for Re-

hearing which you but recently made before Judge Moynihan, and which was peremptorily denied, to-wit: the reference to William Thompson, etc. Aside from the fact that Judge Moynihan denied your request for rehearing most emphatically, yet you have included it in your Brief, whereas it appears nowhere in the Transcript of Record, and certainly you omitted making the record of it, at your own request. * * * I must say to you therefore, * * * unless you withdraw your Petition for Writ of Certiorari and Brief in support thereof from the United States Supreme Court, Docket No. 127, *as you have heretofore filed it,* and advise me of that fact by July 15, 1952 I shall at that time move to have your Transcript of Record and Petition for Writ of Certiorari and Brief in support thereof, Docket No. 127 of the United States Supreme Court, stricken from the Docket on the grounds set forth in this letter."

Mr. Francis replied to this portion of our letter, under date of July 11, 1952, as follows:

"In my opinion, the reference to Thompson in the addendum of the brief which makes no reference to the petition for consideration, is a matter which would be considered more on the merits than on the petition for certiorari, if certiorari were granted, and at which time I understand either party could file an additional brief. Regardless of these facts, if you desire to stipulate the proceedings for reconsideration I will join in such a stipulation with you for what it is worth."

To this letter we replied, under date of July 18, 1952:

"However, the straw which broke the camel's back was the entirely improper matter contained in your United States Supreme Court Brief, going completely outside the record, on page 17 of your Brief, and the entirely and absolutely inexcusable appendage of an alleged photostatic copy of a news-

paper article of the Detroit Times, dated Monday, March 31, 1952. This was matter which had been alluded to in your Motion for Rehearing before the Honorable Joseph A. Moynihan. At your own insistence, we did not include this as a part of the record and I went along with you. Then, when you included this material in your Brief, in view of the circumstances I have just outlined, I considered that most improper and of such a nature that it is absolutely improper to present it to the United States Supreme Court. The record had been certified by our stipulation and by Judge Moynihan. When you included in your Brief matters which were specifically left out of the record at your own request—that is what I referred to and mean by being 'absolutely improper'. * * *

"I therefore, respectfully request that you withdraw your Brief from the Supreme Court and substitute therefor the same brief or any other brief you care to file, without the objectionable material I have alluded to."

Under date of August 1, 1952 we wrote the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States, as follows:

"Aug. 1, 1952,

Honorable Charles Elmore Cropley
Clerk of the Supreme Court of the United States
Washington 13, D. C.

Attention: Mr. E. P. Cullinan, Assistant

Re: *Hotel & Restaurant Employees & Bartenders International Union vs. Richards Greenfield Inc., No. 127 (October Term 1952).*

Dear Sir:

This will acknowledge receipt of your esteemed letter dated July 28, advising that your office received printed copies of a reproduction of type-

written briefs filed in the Supreme Court of Michigan by both parties, but that no transmittal letter explaining the purpose accompanied said briefs.

I wish to advise you that the original agreement between the parties was that the Petitioner for Writ of Certiorari should include these briefs as part of the record before the Supreme Court of Michigan. However, in making up the record, Mr. Hugh Francis, attorney for petitioners, failed to include these briefs as agreed. When I called this matter to his attention, he had them printed up and sent to your office, apparently without enclosing a transmittal letter to explain them as a part of the Record in the Michigan Supreme Court, as agreed upon by the parties.

I, therefore, respectfully request that these briefs be added to and considered a part of the entire Record before the Supreme Court of Michigan.

I, also, have directed the attention of Mr. Francis to the printed brief which he forwarded to your office as his brief on the petition. He has included in that brief highly improper matter which is completely and absolutely outside the Record, to-wit Photostatic copy of an alleged newspaper copy allegedly appearing in a Detroit paper MONTHS AFTER the hearing and the record in this case. I have demanded of him to withdraw this brief, otherwise I would be compelled to request the United States Supreme Court to expunge it from the record of this case in your office. I am awaiting Mr. Francis' reply. Trusting I have fully answered your inquiry, and wishing to thank you for this and past courtesies, I am,

Respectfully yours,

George Bashara.

GB/jm"

When respondent's vehement objection to this matter was pointed out to Counsel for Petitioners as aforesaid, he agreed to attempt to withdraw the brief with the improper matter and to substitute a proper brief therefor. Counsel for both parties wrote a letter to the Clerk of this Honorable Court, requesting the privilege of withdrawing said brief, as follows:

"September 5, 1952

"With reference to the brief filed by the petitioners in the above entitled cause, counsel for both parties are agreeable to stipulating to substitute the identical brief, filed by the petitioners, less the matters objected to by counsel for respondent in the letter to you under date of August 1, 1952, namely, the extraneous matter not included in the record as filed.

"We would both like to know from you whether the substituted brief may be filed by our joint stipulation *nunc pro tunc*, without affecting the Court's jurisdiction to consider the petition.

"We respectfully await your kind early reply.

"Yours very truly,

"(signed) Hugh Francis,
Attorney for Petitioners.

"(signed) George Bashara,
Attorney for Respondent."

However, the Clerk of this Honorable Court informed us that the objectionable brief had already been distributed to the Honorable Justices of this Court, in the following letter, dated Sept. 8, 1952.

"I have your letter of the 5th instant, relative to brief for the petitioner. The papers already filed have long since been distributed to the Justices and

it would not at this late date be possible to physically withdraw them and to file a new brief *nunc pro tunc*. However, a substituted or amended brief could be filed and I do not believe that the jurisdiction of the Court would be affected. The stipulation referred to, if printed in the amended brief, would show the occasion for the substitution.

Yours truly,

(Signed) Charles Elmore Cropley, Clerk
By B. H. W., Deputy."

We respectfully ask the Court's pardon for going into detail as to the improper material included in Petitioners' Brief, but we felt constrained to do so in explanation of our delay in filing the Respondent's Brief. However, as we are advised by the Clerk that the Brief containing improper matter had already been distributed to the Honorable Justices, it was felt that this explanation has been necessary.

Since, therefore, the objectionable matter has been brought to the attention of the Honorable Justices of this Court, Respondent is constrained to inform this Honorable Court that Mr. Hugh Francis, petitioners' present counsel, presented a Motion for Reconsideration to the Honorable Circuit Judge Joseph A. Moynihan, the Trial Judge, based upon the same subsequent, improper and irrelevant matter contained in the newspaper articles as the photostat attached to *petitioners'* brief heretofore filed in this Honorable Court and cause. That matter was thoroughly argued before the Trial Judge, on May 8, 1952, and *while this present Petition was pending in this Honorable Court.* The following is a true and correct transcript of the opinion and decision of the said Trial Court, Circuit Judge Joseph A. Moynihan on the "Motion for Reconsideration":

"OPINION OF THE COURT

STATE OF MICHIGAN—In the Circuit Court for the County of Wayne, In Chancery.

Richards Greenfield, Incorporated, a Michigan corporation, Plaintiff,

v.

Hotel & Restaurant Employees' & Bartenders' Internat'l Union, AFL, Defendants.

No. 477-853.

Before the Honorable Joseph A. Moynihan, Circuit Judge

Appearing: George Bashara, Attorney for Plaintiff; and Hugh Francis, Attorney for Defendants.

May 8, 1952, at 11:00 A. M.

The Court: This is a matter for reconsideration of the Court's determination on an Order to Show Cause for violation of the injunction, heretofore issued by the Court in this cause.

The original order to show cause for violation of the injunctive process of this court took approximately eight to ten weeks of the court's attention; numerous witnesses were sworn on behalf of both the plaintiff and the several defendants. Among them one witness whom defendants now claim to have been prosecuted for criminal activities, one William Thompson.

It appears from the argument of counsel for the defendants at this point that because of some criminal activities of Thompson, that therefore the action of this court in finding several of the defendants guilty of the violation of the Court's injunction, should be held for naught.

The record as made in this case is replete with testimony from numerous witnesses, in whom the court could place credence, of the violation of that injunction by numerous defendants and their agents; in fact, we can leave all of Thompson's testimony out of this record, and I can say now that I did not take a great deal of what he had to say in testimony, at face value, because after some thirty years on the bench a judge gets to know and understand human nature quite thoroughly, and in watching the actions of witnesses, particularly in this case, on the stand, with more emphasis on Thompson's testimony when he finally had to resort to the Court's protection and advice; that he did not have to testify to matters that might incriminate himself, that at that moment any testimony he might give was the subject of indeed very close scrutiny, with its consequent decision by the Court that he was not entirely worthy of belief. However, we don't have to worry very much about Thompson.

As heretofore adverted to, there were many witnesses from reputable business concerns, as people who were the patrons of the premises in question and who were the subject of activities on the part of the defendants and their agents and employees, and the testimony of these purveyors and patrons was sufficient to support, and is sufficient at this time to support the findings as made.

It appears to the Court in this instance that this motion for reconsideration, is filed, and I think the Court is safe in making this finding,—to relieve the several defendants whom this court found to be flagrantly guilty in their violation of the Court's order, and attached a jail sentence to the disposition of this case.

I think it is safe for me to draw the conclusion that if this court was to remit the jail portion of the order, then we hear no more of this case, which at the moment I am advised is the subject of con-

sideration by the Supreme Court of the United States.

Another portion is, of course, that the Court restore that part of the order which recited the fact that in view of the conduct of the Union and other defendants in this action, that no longer could there be possibly peaceful picketing at the scene of the place of business of the plaintiff.

In the court's finding on the subject of revoking a part of the order with respect to the permission of peaceful picketing, the Court used the language and feels even at this time it was justified in making that finding, that when it took practically the entire complement of the police force of the Schaefer Precinct Station of the City of Detroit to preserve peace and order, that it ceased to become peaceful, and the Court does not feel justified in view of that, at this time of changing that finding.

In going over this matter that has been argued at length this morning by counsel for the defendants and counsel for the plaintiff, the court finds nothing in this petition at this time to warrant the relief prayed for in the petition as filed.

It follows that the same will be denied.

Mr. Francis: I could not follow from your Honor's statement there, whether or not you had remitted the jail sentence part.

The Court: No, I have not. I said I took it from the argument made, that if I was going to remit that portion of my order, that we would hear no more of this case. If I did not make myself clear, Mr. Francis, I will say now, that there will be no change in the order as made. It stands just exactly as I heretofore made it.

I, Aaron A. Silberblatt, official court stenographer, do hereby certify that I reported stenographically the proceedings in the above entitled cause as hereinabove set forth; that the same was taken down by me in shorthand notes, and by me reduced to writing, and that the foregoing as is hereinabove set forth, is a true and a correct transcript of the same.

Aaron A. Silberblatt,
Official Court Stenographer.

Dated at Detroit, Michigan,
June 12th, 1952."

This motion to Reconsider and Judge Moynihan's disposition of it were not included in the printed record filed in this Honorable Court *at the specific request of Counsel for Petitioners.* For this reason respondent made demand upon Petitioners to expunge said objectionable matter from their brief.

ARGUMENT

So that we may not burden the Honorable Justices with repetition, the indulgence of this Honorable Court is respectfully requested to have "PLAINTIFF'S MEMORANDUM BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" (pages 15-41) of the "Printed Reproduction of Typewritten Briefs filed in the Michigan Supreme Court by the Petitioners and the Respondent in the State Court Petition for Certiorari," printed copies of which were filed as Exhibits with the Clerk of this Honorable Court *as and for the brief of the Respondent* in this Honorable Court.

CONCLUSION

It is therefore respectfully submitted that NONE of the constitutional rights of the petitioners have been in any manner whatever violated; on the contrary they had a full, complete, exhaustive hearing contained in thousands of pages of typewritten transcript of testimony adduced over a period of three months from scores of witnesses, with every imaginable opportunity to bring in whatever possible testimony they had, to attempt to justify their lawless, violent, wilful, wanton, riotous contempt not only of the injunction of the Honorable Circuit Court for the County of Wayne, Michigan, but disregard of, and contempt for, every National and State Law and the Constitutional Rights of the respondent. The Petitioners have not pointed out, nor can they point out, a single act of abuse of discretion by the Trial Judge who gave three months of valuable court time to permit Petitioners to show cause why they should not be punished for their flagrant contempt of his injunction and of all law.

It is therefore, respectfully submitted that this Petition should be denied with costs to the Respondent.

Respectfully submitted,

GEORGE BASHARA,
Attorney for Respondent,
3302 Cadillac Tower,
Detroit 26, Michigan.

Dated: September 15, 1952.

Office - Supreme Co
FILE
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CHARLES ELMORE

No. 127

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,

vs.

RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

REPLY BRIEF OF PETITIONER

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Detroit 26, Michigan.

Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan